REGISTERED NO. D. 221.

The Gazette of India

EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

No. 121] NEW DELHI, WEDNESDAY, APRIL 20, 1955

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 4th April 1955

S.R.O. 845.—Whereas the election of Shri N. Satyanathan of Shankaridrug, Salem District, Madras State, as a member of the House of the People, from the Dharmapuri constituency of that House has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri K. Subramanyam of 91 Karuppa Goundar Street, Coimbatore, Madras State;

And whereas, the election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, NORTH ARCOT, VELLORE

PRESENT:

Sri M. Anantanarayanan, I.C.S., *Chairman.*

Sri P. Ramakrishnan, I.C.S., *Member.*

AND

Sri B. V. Viswanatha Aiyar, M.A., B.L., *Member.*

Thursday, the 22nd day of January, one thousand nine hundred and fifty-three.

ELECTION PETITION NO. 35 OF 1952

K. Subramanyam—*Petitioner.*

Versus

1. N. Satyanathan.
2. D. K. Gurunatha Chettiar.
3. M. G. Natesa Chettiar.
4. D. Arogyaaswami Pillai.
5. T. S. Pattabhiraman.
6. S. K. Baby *alias* Kandaswami.
7. R. Nallathambi Goundar.
8. Kulandaivelu.
9. Q. S. Nataraja Goundar.
10. D. C. Rajan.—*Respondents.*

(Respondents 4 to 10 are added as per order on Interlocutory Application No. 256 of 1952, dated 29th November, 1952).

This Election Petition is filed under Section 100 of the Representation of the People Act, praying to declare that the whole election to Dharmapuri Parliamentary Constituency is void.

This Election Petition coming on for hearing before the Tribunal on the 10th and 16th days of January, 1953, upon perusing the Election Petition and other material papers thereto, and after hearing Messrs. S. Viswanatha Aiyar, Advocate of Madras Bar and U. Rangaswami Aiyangar, Pleader, for the petitioner, Messrs. K. Rajah Aiyar, C. S. Ramachandran and P. Varadachariar, Advocates for the 1st respondent, Sri D. Annamalai Chettiar, Advocate, for the 2nd respondent, and the rest of the respondents 3 to 10 being absent *ex-parte*, and having stood over till this day for consideration. The Tribunal delivered the following

JUDGMENT

The petitioner seeks to set aside the election of the first respondent (Sri N. Satyanadhan) to the House of the People from the Dharmapuri Parliamentary Constituency, upon the ground that the first respondent was disqualified under Section 7 (d) of the Representation of the People Act, 1951 on the date of nomination, and that the acceptance of this nomination by the Returning Officer in spite of objections raised by the petitioner was improper and invalid. The petitioner affirms that the result of the election has been materially affected by the improper acceptance of the nomination of the first respondent, and that the entire election must, therefore, be set aside. In paragraph 4 of the petition, the petitioner sets forth how the disqualification under the Statute arises namely, because, prior to the material date, the 1st respondent had entered into a contract with the "appropriate Government" (the Government of India) for his benefit, for the carriage of mails between Salem and Yercaud in his motor buses for monetary consideration. In paragraph 10, the petitioner attempts to meet, in anticipation, a ground of defence likely to be urged by the first respondent that he was obliged to perform the mail service by virtue of a statutory duty arising under Rule 160-B of the Madras Motor Vehicles Rules, 1940, framed under the Motor Vehicles Act (IV of 1909), and that, as such, the contract in question is an involuntary contract, being the mere undertaking of an obligation under statute, and hence not within the mischief of Section 7(d) of the Act. We shall have occasion, later, to examine this defence in considerable detail, in all its ramifications, and it is sufficient here to note the broad pleadings. The 2nd and 3rd respondents have filed counter-statements making common cause with the reliefs sought by the petitioner.

2. The counter-statement of the first respondent affirms that the acceptance of the nomination of this candidate by the Returning Officer was proper and valid, upon three main grounds. Firstly, the carriage of mails from one place to another is not the performance of any service *undertaken* by the Government, within the meaning of Section 7(d). It is the exclusive privilege of the Government of India to convey all Postal articles from one place to another, and it is the normal function of a Government reserved by Statute to itself. Secondly the respondent was under a statutory obligation to perform this service, as the holder of a stage carriage permit upon the same route. It is not justifiable to regard the respondent as having any interest in a contract for the performance of this service, for his own benefit. Paragraph 9 of the counter-statement expounds the obligation under Rule 160-B of the Motor Vehicles Rules, and also refers to the proceedings of the Regional Transport Authority, dated 19th July 1949 fixing the subsidy for the service. It is further pointed out that when Sunday mails were abolished, the authorities reduced the subsidy *pro rata*, without reference to the respondent. The rules issued relating to elections specifically declare that no one will be disqualified as a result of his holding a stage or public carrier permit. There is not a contract, because there is no voluntary choice. There was neither offer nor acceptance, and the contract was not brought about by the consensus of the parties concerned. Thirdly, and lastly, the plea is taken that under Article 103 of the Indian Constitution, the President alone has the jurisdiction to decide the question of disqualification of a member, and not this Tribunal.

3. The following issues were framed in this petition:

(1) Is the nomination of the first respondent invalid because of the prohibition contained in Section 7(d) of the Representation of the People Act, 1951, or for any of the reasons set forth in paragraphs 9 to 11 of the petition?

(2) Has this Tribunal no jurisdiction to decide the question as regards the disqualification of the returned candidate, because of Article 103 of the Constitution of India?

Additional Issue (arising from Interlocutory Application No. 256 of 1952, the petition for impleading seven more duly nominated candidates as respondents, which was allowed by this Tribunal)—

Is the Election Petition barred by Limitation for the reason that the newly added respondents were impleaded beyond time?

4. *Issue* 1.—Before proceeding to examine the questions of fact and law involved in the determination of the main issue, which are of considerable interest and some degree of difficulty, it is essential to have the admitted facts in perspective. The first respondent was the holder of a State carriage Service Permit issued by the Regional Transport Authority in his favour (Exhibit B-2) dated 26th April 1949 for the plying of buses between Salem and Yercaud. This had been renewed from time to time, and is still in force. Condition 11 of this permit reproduces Rule 160-B of the Madras Motor Vehicles Rules concerning the obligation to carry mails. On 16th November 1949 the first respondent entered into a registered agreement with the Government of India "for the provision of a Motor Vehicle Service for the transit, conveyance and delivery of all postal articles and mail bags between Salem Junction and Yercaud Post Office". We shall have occasion, subsequently, to proceed into detailed examination of the conditions and mutual obligations of this agreement or contract, in order to appreciate its scope and true character. But, certain other documents made available to us throw some light upon the procedure adopted in these cases. It may be here convenient to extract Rule 160-B of the Madras Motor Vehicles Rules, 1940, which is in the following terms—"It shall be a condition of every stage carriage permit that the holder of the permit shall, if so required by the transport authority which granted the permit, carry mails at such rates and on such terms as the transport authority may fix after consultation with the holder of the permit and the postal authorities concerned". Exhibit B-3, dated 15th July 1949 is a notice issued by the Regional Transport Officer to the 1st respondent intimating him of a meeting of the Regional Transport Authority on 19th July 1949 when the question of fixing a reasonable subsidy for the conveyance of mails on this particular route would be considered. Exhibit B-4, dated 23rd July 1949 is a communication to the first respondent of the decision arrived at at this meeting namely, the fixation of the subsidy at Rs. 200 as reasonable. Exhibit B-5, dated 29th April 1952 is a Memorandum of the Regional Transport Officer calling upon the first respondent to carry mails upon a different route (between Sankari R. S. and Jalakandapuram) as the permit of another permit holder had been cancelled, and the first respondent was performing the substitute service. Its relevance appears to be that the holder of a stage carriage permit for a particular route could be called upon by the Regional Transport Authority to perform the duty of carriage of mails, in accordance with Rule 160-B. Exhibit B-8, dated 22nd November 1950 is a letter by the Superintendent of Post Offices to the first respondent, decreasing the subsidy *pro rata*, as 'Sunday Mails' had been cancelled. It is valuable as indicating who the contracting parties were, who could enforce the mutual obligations arising under the contract. It is significant that, when it comes to this matter, the Superintendent of Post Offices, representing the Governor-General, deals directly with the first respondent, the agreement or contract not being tripartite in character, nor inclusive of the Regional Transport Authority. We need not deal, at any length, with the objection of the petitioner efore the Returning Officer (Exhibit A-1), or the order of the Returning Officer (Exhibit A-2), overruling that objection. As the order (Exhibit A-2) itself shows, the Returning Officer was not aware of the explicit registered agreement or contract (Exhibit A-3), which was not made available to him at that time. The order of the Returning Officer is, thus, based (as practically admitted) upon an imperfect apprehension of the facts. But, it is not the propriety of the order that we are concerned with, since the 1st respondent is certainly entitled to the much wider defence that the penalty of the disqualification ought not to be applied to his election, if he could avoid the ambit of Section 7(d) upon any conceivable ground. We endorse and accept the view that, being a penal provision, the disqualification should be strictly construed and applied. The benefit of any valid doubt concerning its applicability must be extended to the first respondent, the candidate elected for the seat.

5. The first respondent has also adduced oral evidence, examining himself as R.W. 1. We shall discuss, in appropriate context, how far this evidence is relevant to rebut any of the plain inferences arising from the executed agreement. It is here sufficient to note that the first respondent swears that he executed the

agreement, as the Regional Transport Officer called upon him to execute the agreement with the Postal Authorities, that the terms thereof were determined by the Regional Transport Officer in consultation with the Postal Authorities, and that he did not feel himself free to alter any of the terms and conditions, which were not even explained to him.

6. Keeping this background in view, we may next proceed to an examination of the disqualification under Section 7(d), and the defence of the first respondent to its alleged applicability. For our purpose, the relevant part of Section 7(d) may be set forth as follows: "If, whether by himself, or by any person, or body of persons in trust for him, or for his benefit, or on account of his having any share or interest in a contract for the performance of any service undertaken, by the appropriate Government." We shall examine, separately, the defence that the carriage of mails is not a 'service' 'undertaken' by appropriate Government (the Government of India) because of a variety of considerations. For the present, let us commence with the admitted document of agreement or 'contract', however it be styled. The preamble of this document (Exhibit A-3) is significant. It states that the first respondent "has offered to contract with the Governor-General for the provision of a motor vehicle service" etc., and that "the Governor-General has accepted such offer upon the terms and conditions hereinafter appearing". The other terms of this contract, which is both explicit and detailed, will be scrutinised when we come to the question of its being, in substance, a wider and more comprehensive agreement altogether, than the mere undertaking to perform the statutory duty under Rule 160-B, the mere paraphrase of that obligation. But, assuming for a moment, that it is not a wider and a varied contract, let us examine the situation. Mr. K. Rajah Ayyar for the first respondent has placed the following submissions before us, upon this aspect as propositions of Law. (i) From the inception, the juristic conception of a contract involves the essential ingredients of a free consensus of acceptance and offer, in other words, of a capacity to bargain, and a free offer and acceptance. Where these elements of freedom and volition are lacking, the legal entity known as 'contract' does not truly exist, though there may be an outward sembalance of a contract, a mere form without substance. (ii) There are also contracts arising by a kind of legal fiction, known as *Quasi Contracts*. There may be implied contracts, which are mere statutory obligations, and discussion has arisen whether even judgments of Courts could be construed as contracts in a certain sense. But all these lack the vital and intrinsic quality of volition, of freedom of offer and acceptance. (iii) No contract, whatever its outward semblance, which is the mere performance of a statutory obligation, or the mere undertaking to perform, can be a juristic contract. The penal disqualification under Section 7(d) ought not to be applied to *Quasi Contracts*, and contracts which were not 'freely' arrived at in this sense, since the legislature could not have intended such application. (iv) Alternatively, a contract, such as the one in this case, is totally lacking in consideration. Firstly, it is an undertaking to perform a statutory obligation, and, secondly, the monetary consideration is no more than the subsidy already payable by the Regional Transport Officer, and which is fixed by that Authority. Again, an undertaking with a fresh party to perform what is already due to another, and for the same consideration, cannot amount to a valid contract supported by consideration. These arguments have occasioned us anxious consideration of the points involved, and of the authorities made available. Fortunately, we think that we can place our decision upon the surer and broader footing of the contract in this particular case, and its scope and character in relation to the specific statutory obligation. But we are basing our decision also upon the questions of law, since they seem to us to support and buttress and not otherwise.

7. In *Wilson* v. *Lord Bury* (V Queen's Bench Division 519 at 530) the definition of contract by Story is quoted,—"A contract is a deliberate engagement between competent parties upon a legal consideration, to do or to abstain from doing some act:" In Cheshire on the 'Law of Contracts' (1945 Edition page 18) it is observed that contractual obligations "were self-imposed" and the author adds "Their relationship was based upon intention." Part IX of the same work refers to *Quasi Contracts*, which according to the learned author, are contracts by a kind of legal fiction, having "little or no affinity to contract". Mr. Rajah Ayyar has also made available to us, the decisions of the Supreme Court of the United States in *Morley* v. *Lake Shore & Michigan Southern R. Co.* (146 U.S. page 925 at 929, 36 Lawyers' Edition), *Louisiana* v. *Mayor, Etc. New Orleans* (109 U.S. page 936 at 937—27 Lawyers' Edition) and *Steamship Co.* v. *Joliffe* (2 Mall. 450). In *Morley* v. *Lake Shore & Michigan Southern R. Co.* the Court observes, with reference to the protection of the Federal Constitution relating to contract, that the word is used "in its ordinary sense, as signifying the agreement of two or more minds, for considerations proceeding from one to the other, to do, or not to

do, certain acts". In *Louisiana* v. *Mayor, Etc. New Orleans* Mr. Justice Field discusses *Quasi Contracts* namely, a judgment for demages 'sometimes called by text writers a specialty or contract of record, a statutory obligation' etc. In *Steamship Co.* v. *Joliffe* Mr. Justice Field distinguishes between an actual contract, and an implied contract, where "the law has imposed an obligation which is enforced as if it were an obligation arising *ex contractu*. In such a case there is not a contract, and the obligation arises *ex lege*." In Willis on Constitutional Law (1936 Edition) 'Executory Contracts' are referred to and discussed at page 605. To our mind, the discussion, as relating to *Quasi Contracts*, contracts inferred from statutory and allied obligations, etc., is really not germane to the issue before us. We perfectly realise that freedom to offer and assent, and mutuality of assent, are essential concepts in a contract. We have no reason for thinking that the law in this country, though codified, is different, and we would refer to the "free consent of parties competent to contract" emphasised in Section 10 of the Contract Act, and to the definition of "free consent" under Section 14, which again refers to the succeeding Sections 15, 16, 17, etc. But the very important point is, does a contract, expressed and embodied in writing as such, cease to be a contract, merely because it arises in the context of a statutory obligation? We could follow the argument if the statutory duty *involved the duty or obligation to enter into such a contract*, or, if, upon the vital test of consideration, the contract fails. But, surely, the mere existence of an obligation under law cannot prevent a party from entering into a valid and enforceable contract in respect of that obligation. Ideas such as 'free' offer, 'free' acceptance, the capacity to bargain resulting in a mutual consent etc., have to be interpreted relative to the given situation, and not absolutely. As was pointed out by us, where the statutory duty does not require the party to enter into the contract *per se*, there is always freedom to enter or not to enter. Our view is fortified by two main sources of authority. The first is the definition of contract in Section 10 already referred to, particularly read in the light of Section 14 of the Indian Contract Act. The second is a passage in Leaks on 'Contract' (Eighth Edition page 13), where the learned author observes, in relation to powers to compulsorily acquire lands from a private owner, "It is to be observed that the possession of compulsory powers does not exclude the right to contract exclusive of those powers with the ordinary consequences". We have been able to trace two authorities in this connection namely, *Mason* v. *The Stokes Bay Pier and Railway Company* (1863) (32 Law Journal Ch. page 110) and *In re Pigott and the Great Western Railway Co.* (18 Chancery Division 146). The following observations of Sir G. Jessel, Master of the Rolls, in the latter case at page 150 are highly significant—"Still, if it is a contract, it must be a contract of which he can get specific performance; and although it was originally, so to say, made against his will, it has now become a contract enforceable in the ordinary way, and therefore all the consequences of that contract will follow;". We hence see that a valid and enforceable contract, a juristic contract, may arise in the context of a statutory duty, and that this is perfectly conceivable. Such a contract has been held enforceable in Courts, with all the incidents of a contract, and the freedom of bargain, which precedes it, cannot be construed absolutely, since, in a sense, all contractual obligations are the results of influences, and choice itself is relative.

8. It is true that, in a certain conceivable case, there may be a semblance of a contract, which is not a contract at all. In spite of what the document expounds or recites, it may be nothing more than a paraphrase of a pre-existing duty imposed by the law. Learned Counsel for the first respondent has referred us to a decision, which he considers important upon this aspect, namely, *Ransom & Iuck Limited* v. *Surbiton Borough Council* (L.R. 1949 Chancery 180). The facts in that case were that the defendants, who were the interim development authority for the purposes of the Town and Country Planning Acts, 1932, submitted a scheme under the Act which had not been approved. In 1939 the defendants, the plaintiffs and a third party entered into a specific agreement, in respect of a land of the plaintiffs included in the development area. The plaintiffs brought an action claiming damages on the ground that they had been refused liberty to develop their land, in breach of the development agreement, their contention being that under that agreement the defendants assumed a contractual obligation. We note that one point involved in this decision, *viz.*, that the defendants could not competently incorporate in the agreement any restraint of their statutory powers, is not germane to the issue before us. But, what is said to be relevant is the *dictum* of Lord Greene M. R. to the effect—"they incorporated the permission in this agreement. That does not, in my opinion, alter its character as a mere permission or deprive the authority of the powers * * * of revoking that permission." Again, in another passage, the learned Judge refers to the agreement, which may be "nothing more than a permission under Section 10 of the Act of 1932". We agree that it would make a difference, in the instant case, if either (i) the contract between the 1st respondent and the Government of India

(Exhibit A-3) is nothing more than the permit, which the first respondent already held, or is a mere paraphrase of its terms and obligations, or (ii) if, as a matter of fact, because of the statutory compulsion under Rule 160-B the first respondent did not make an offer, did not exercise a choice, and merely executed an agreement which is no contract, but its unsubstantial semblance. We agree that Section 92 of the Evidence Act does not preclude the first respondent from establishing the latter proposition. But, upon an examination of the statutory obligation itself, and of the present contract, we are quite unable to see how either of these propositions could, even for a moment, be held and sustained.

9. It is now time that we examine, with some care, the nature of the statutory obligation arising under Rule 160-B already set forth. Learned Counsel for the petitioner has rightly contended that, whatever might be the state of affairs in the United Kingdom where there is a special enactment relating to carriage of mails by Railways and public carriers, and on unwritten Constitution, the matter has to be differently viewed in this country where fundamental rights are guaranteed to the subjects of the Republic under a written Constitution. He rightly relied upon *Raman & Co.* v. *The State of Madras* (1952-II M.L.J. 544) as authority for the view that a liberty to carry on business, such as the plying of buses, is a fundamental right, upon which the State can only put reasonable restrictions in the interests of general public. He affirmed that Rule 160-B was *ultra vires* of the powers of a Provincial Government to make rules under Section 68(1) or (2) of the Madras Motor Vehicles Act, but the word 'prescribed' in Section 68(2) (za) has been defined in Section 2 (21) as "prescribed by rules made under this Act", and the argument does not appear to be sustainable. But, he certainly seems justified in his view that restrictions cannot be imposed which offend against fundamental rights, and it is debatable whether the holder of a stage carriage permit can be statutorily required to carry mails, which is a distinct matter pertaining to a right reserved by the Government of India. But it is not at all necessary to proceed to this length. It is sufficient to note that the rule can only mean, interpreted reasonably and with commonsense, that the holder may be required to carry mails upon that route, and in the vehicles for which the permit is obtained, assuming of course that he may have to maintain the vehicles in a road-worthy condition. Any wider interpretation would lead to the illogical position that the holder of a stage carriage permit would be compelled, *per se*, to maintain a regular and independent mail service, investing further capital of proportions which cannot be ascertained. Mr. K. Rajah Ayyar did not offer any argument against the more restricted and reasonable interpretation we have set forth; we might even say that he conceded it. But, in the context of this statutory duty, we have to see what is the character and scope of the contract which the first respondent entered into with the Government of India.

10. We have already referred to the preamble of this contract which states, in explicit terms, that the first respondent (the contractor) offered to contract with the Governor-General "for the provision of a motor vehicle service" and that the Governor-General had accepted the offer. When we scrutinise the terms and conditions, we see that the contract can, by no reasonable interpretation, be termed a mere paraphrase of the statutory obligation, or a mere expression of it, though it might have arisen in that context. We admit that, under Rule 160-B, the Road Transport Authority has the power to determine the rates and terms upon which the holder of the permit should carry mails, and, in this view, we have excluded from consideration all those matters in the contract, which might be regarded as obligations arising within this sphere, upon a very liberal construction. But, even so, there are at least several vital provisions in the contract (Exhibit A-3), which cannot be remotely referred to the bare statutory power and obligation, and which appear to evidence a far more comprehensive agreement between the contracting parties for the provision of a mail service on this route. We note, for instance, that under Condition 2 the contractor is to provide "additional motor vehicles", as many as may be deemed necessary by the Postmaster General, for the carriage of mails on this route. This has to be read with Condition 5, which obliges the contractor to maintain in good order "two motor vehicles fitted with gas plants" at Salem Junction, and the same term compels him to maintain "spare motor vehicles", always subject to the approval of the Postmaster General, Madras as to fitness. This duty of providing motor vehicles for a mail service, quite independently of the number of vehicles for which the original stage carriage permit (Exhibit B-2) was obtained, is obviously outside the obligation. Next, under Condition 10, the contractor undertakes to carry in his motor vehicles on this route, free of all charge, Non-Gazetted Postal and Telegraph Officers travelling on duty, together with their personal luggage. We are unable to conceive how it could be contended that such an undertaking could be related to the legal obligation under Rule 160-B. Next, reference might be made to the powers of the Postmaster General (Condition 11) to compel the dis-

missal of any driver or conductor, whose character or want of ability appear likely to affect the efficient carriage of mails (term 11). The vehicles used for the conveyance of mails have also to be fully repainted towards the end of March or October of each year. These terms suggest that, in the context of the statutory obligation, the parties have chosen to enter into a wider, distinct agreement, incorporating several significant conditions exceeding the obligation. As learned Counsel for the petitioner rightly urged, term 18 in particular, which gives the right to the contracting parties to terminate the contract after giving four months notice is incompatible with the mere paraphrases of a statutory duty, as you certainly cannot put an end to a duty of that character in that mode. Under term 19 the Governor-General reserves wide powers to forfeit the deposit, in part or whole, the sum of Rs. 400 referred to in the preamble. There is also a power to refer a dispute to arbitration, and even confining our attention to these most salient and significant 'variations', this is sufficient to show that Exhibit A-3 is a distinct and comprehensive contract, which cannot be explained away as the mere exercise of the powers of the Road Transport Authority to fix terms under Rule 160-B.

11. Here we may relevantly discuss the question of fact whether there was a free offer and acceptance, as the preamble states. We have already discussed the connotation and meaning of the ingredient of freedom in a contract, and emphasised that a contract, which comes into existence in the context of a statutory duty, may, nevertheless, be perfectly valid and enforceable in all respects. Our examination of the actual contract (Exhibit A-3) shows that we cannot accept the oral testimony of the first respondent (R.W. 1),—in opposition to the tenor, purport and terms of this registered instrument, that he merely obeyed the order of the Road Transport Authority to execute this agreement without a thought to its terms, and without feeling himself free to accept or reject them. Nor can it be said that the terms are onerous, that advantage was taken of the statutory obligation which lay upon the first respondent, to load the agreement with all conceivable conditions for the benefit of the Postal Authorities, and that the first respondent came off poorly in the sense that, in exchange for all this, he was to receive nothing more than the same subsidy already fixed, only from the hands of the Governor-General instead of the Road Transport Authority. We shall discuss this further, when upon the aspect of consideration. But we may here note that the right to carry mails along this route for a period longer than, and different from, that to which the stage carriage permit relates might well possess compensatory advantages. Under Condition 18, the contract is liable to be terminated if the contractor fails to secure a renewal of the stage carriage permit on this line, but the very fact that he is the contractor for carriage of mails under this agreement, might well constitute a stratagic advantage in obtaining the renewals. Again, the right to sue the Government of India upon the contract, and to receive the subsidy from that Government, may be ordinarily technical or formal benefits, but not always so.

12. We must now turn to the important question whether a 'secondary contract' of this kind, an undertaking to perform in favour of another party, an obligation which is pre-existing and for the same consideration, is valid contract in the sense that it is supported by consideration. We might easily resolve this difficulty by pointing out that the contract (Exhibit A-3) is by no means a mere undertaking to perform a pre-existing obligation, but is a wider, distinct agreement. Particularly, if it once be conceded that the statutory obligation merely requires the first respondent to carry the mails in those motor vehicles for which he had obtained the stage carriage permit, it will be undeniable that the contract (Exhibit A-3) for providing motor vehicles for mail service along this route in such number as the Postal Authorities require, and without reference to the narrow obligation, is substantially a different agreement.

13. But in view of the interest and importance of the question of law involved, we propose to dwell on it a little. The matter is discussed in several text books, in the light of what Cheshire calls a 'trilogy' of cases in the middle of the 19th Century namely, *Shadwell* v. *Shadwell* [30 L.J. (C.P.) 145], *Scotson* v. *Pegg* (3 L.T. 753) and *Chichester and wife* v. *Cobb* (14 L.T. 433). Very briefly, the facts in the first case (*Shadwell* v. *Shadwell*) were that the plaintiff sued the executors of his uncle who had promised by letter to allow him £ 150 a year, if he would marry the lady to whom he was then engaged. On the strength of this promise the nephew married, the annuity fell into arrear, and the uncle died. The question was as to the existence of a consideration for the uncle's promise, and the letter was accepted as the basis of a contract. In *Scotson* v. *Pegg*, the plaintiff promised to deliver to the defendant a cargo of coal then on board one of his vessels. The defendant promised to discharge the cargo at a certain rate, and when sued by the plaintiff for breach of contract, pleaded that the plaintiff

was bound under contract to deliver the coal to a third party or to his order. The plaintiff had, therefore, undertaken nothing more than he was already bound to do under the prior contract, and there was no consideration. Baron Wilde observed "But there is no authority for the proposition that where there has been a promise to one person to do a certain thing, it is not possible to make a valid promise to another to do the seme thing." The cases have given rise to some difference of opinion among jurists upon the question whether the performance of the obligation, *viz.*: 'the executed consideration', is the true consideration for the secondary contract, or whether, as Sir Fredrick Pollock thought, the *promise* might be a good consideration. But we note that the Law Revision Committee recommended that "an agreement in which one party makes a promise in consideration of the other party doing or promising to do something which he is already bound to do by law or by a contract * * with a third party, shall be deemed to have been made for valuable consideration." As far as the law in this country is concerned, the Contract Act itself would appear to be heavily in favour of such an interpretation. We might refer to Section 2(d), emphasising the words "at the desire of the promisor, the promisee or any other person has done or abstrained from doing * * * or promises to do or abstain from doing something", such act, abstinence or promise amounting to consideration. Again, Sir Fredrick Pollock observed "Whatever resolution of the speculative question may ultimately prevail, the diffculty may be removed, in the case of performance, by the slightest appreciable addition to the performance already contracted for" and we have sufficiently emphasised the 'variations' of the fresh contract in this case. Further, a promise to perform an abstinence, mutual acceptance of obligations giving rise to a right of suit between the contracting parties, are all elements of valid consideration, as the law has been interpreted in India. Thus, where after the expiration of the time fixed for completion of a mortgage, the mortgagee declined to advance the money unless the mortgagor consented to pay interest from the date fixed for the completion, and the mortgagor agreed to do so, it was held that there was good consideration for the agreement. Again, where time is extended for the performance of a contract by mutual agreement, it has been held that the reciprocal promises themselves well constitute the element of valid consideration to support the agreement for the extension of time (Muhammad Habibullah V. Bird and Co., I. L. R. 43 Allahabad 257 P.C.). Sir Frederick Pollock emphasises that "in a contract by reciprocal promises, the promises are the consideration for each other".

14. Mr. K. Rajah Ayyar argues that owing to the terms of Section 5 of the Indian Post Office Act (VI of 1898), the Governor-General or the Central Government has no power to enter into contract like Exhibit A-3, apart from the scope of the statutory obligation under Rule 160-B. He argues, as a consequence, that there is no contract in the present case apart from the legal obligation, or a paraphrase of it, because the significant wider terms which we have discussed, are void for repugnance. We find it difficult to follow this argument. Section 5 imposes a prohibition upon certain persons to carry mails in derogation of the rights reserved by the Government. We are quite unable to see how it fetters the Central Government in the matter of entering into a contarct of this description, or permitting an agent to carry mails. In this view, it is impossible to hold that the 'secondary' contract (Exhibit A-3) is not supported by consideration, upon any of the grounds advanced.

15. Finally, we come to the matter of the application of the actual disqualification under Section 7(d). A penal disqualification of this character must certainly be construed strictly, and, if authority were needed, we would refer to the observations in *Thompson* v. *Pearce* (129 English Reports, page 632). But once the disqualification applies, we see no reason upon which it could be argued that because a great hardship would accrue, or because the person concerned did not materially benefit from the contract, or because it is not likely that his newly-acquired status as legislator would affect the performance of his duty under the contract, he should not be disqualified. In our view, the true rule is that enunciated in *Lapish* v. *Braithwaite*, L.R. 1925—I King's Bench—(page 474 at page 485), and a possible conflict between duty, and interest, or "a possible source of temptation" is sufficient, the Legislature being rightly jealous of the freedom and interest of citizens in this respect. We need no speculate, but it is sufficient to observe that, conceivably, the scheme of such Postal Contracts, or a proposal that the Government of India should itself, maintain a stage service for carriage of mails, might be the topic of legislation, when this conflict between interest and duty might arise in the case of a person circumstanced like the first respondent, We might also refer to the decision in *Semuel In Re.* (1913 Law Reports, Privy Council page 515) where Their Lordships held for a disqualification, with regard to a member of a firm holding a contract with the Secretary of State for India in Council, even though there was no suggestion "of any improper motive", and

though the construction placed upon the Statutes by the Member of Parliament concerned was not unsupported by former proceedings. It is perfectly true that, in the 'Election Manual' there is a passage to the effect that a candidate will not be disqualified because he is the holder of a stage carriage permit, which must include, incidentally, the obligation under that permit to carry mails. The true source of authority for this view appears to be a passage in Rogers on Elections (Volume—II—page 31) referring to the decision in *Londonderry* (1860) *W. and Br.* 206 which held that a lessee conveying mails on his railway under a contract with the Post-Master General was not disqualified. In spite of attempts by learned Counsel, they have not been able to make the report or text of this decision available to us. But we should note this. Firstly, the obligation of public carriers to carry mails, in the United Kingdom, has itself been the subject of a comprehensive enactment, presumably far wider in its scope and effect than any authority, which could be invoked under Rule 160-B. The reasoning of this decision is not before us, nor the provisions of such an enactment. Secondly, the terms of the disqualification are also not before us, and how precisely the relevant Statute had expressed them.

16. We now proceed to the branch of the argument relating to the question of a 'service undertaken' by the Central Government, the appropriate Government in this case. We do not think that it could be reasonably contended that the provision of Post Offices and the transport of mails, is not a 'service'. As learned Counsel for the petitioner emphasised, even in the United Kingdom, it was a service which was being performed by private agencies until a late stage, when the State undertook this service, in the interests of its citizens. It cannot be argued that it is an inherent function of the State, inseparable from its existence as a State, and therefore not a 'service'. Even now, the Central Government cannot be compelled, by the citizens of India, to provide for transport of mails or postal facilities at a particular village, however remote, and irrespective of financial considerations. But what Mr. Rajah Ayyar contends is that, under Section 4 of the Indian Post Office Act, the Government reserves to itself this right or privilege, and that, therefore, it cannot be a 'service'. We think that, as a careful perusal of the section shows, the reservation of this privilege in the Central Government is nothing more than the declaration of a monopoly. Section 4 does not oblige the Central Government to perform or undertake the service in question. That is done by the Government in the interests of its citizens, and we would refer to our prior judgment in E.P. No. 109 of 1952, where we have furnished the definition of the word 'undertake' in Stroud's Judicial Dictionary, and also cited the observations of *McCardie J.* in *Lack* v. *Epsom Rural District Council* (19) *I.K.B.* 383. It is significant that the learned Judge thought that the meaning of 'undertake' would also include this: "or in practice so acted as to show that they had resolved to do it".

17. To sum up our conclusions, we find—(1) that the Postal service, and the provision for transport of mails, is certainly a service undertaken by the Central Government within the meaning of Section 7(d); (2) that, on the date of nomination, the first respondent was a contractor under the Central Government, as a party to an explicit and comprehensive registered agreement, for the performance of this service on the Salem-Yercaud route; (3) that though this agreement might have sprung into existence, so to speak, in the context of the statutory obligation imposed on the respondent as the holder of a stage carriage permit, under Rule 160-B, it involves significant mutual obligations, which are not at all referable to the bare statutory duty, and it is a distinct, valid and enforceable contract; (4) that, upon this analysis of the contract, we must consequently hold that it resulted from a mutuality of assent based upon a free offer and acceptance, as set forth in the preamble; even otherwise, we would hold, as a question of law, that of contract does not cease to be one, merely because it arises in the context of a statutory duty, or a person is impelled to enter into it in the light of such a duty, so long as it is embodied, expressed, and supported by consideration; (5) that the contract in question could be held supported by valid consideration, upon several grounds; we also hold that the best legal authority seems to favour the view that such 'secondary' contracts are valid and supported by consideration, the consideration of a promise to perform to a fresh party, being sufficient in the eyes of law; and lastly (6) that it is our duty, following the rule in *Lapish* v. *Braithwaite* already quoted, to apply the disqualification as intended by the Legislature, provided it is applicable upon a strict construction, and irrespective of tangible or appreciable benefit from the contract. We would answer issue 1 against the first respondent.

18. *Issue* 2.—We may state that this issue has not been seriously pressed. It is perfectly true that under Article 103 of the Constitution, it is the President who has to decide every question of disqualification of a member. Under the Representation of the People Act also, no order of this Tribunal is conclusive,

nor does it take effect, until publication is effected in the *Gazette of India* under Section 106 of the Act (Section 107). Any order of this Tribunal cannot therefore be repugnant to Article 103 of the Indian Constitution.

19. *Additional Issue.*—It is lastly contended on behalf of the first respondent that the Election Petition is barred by limitation. The petitioner originally impleaded only the candidates who had contested the election, and omitted to implead those candidates whose nominations were held to be valid but who withdraw from the contest. On objection being raised by respondent under Section 82 of the Representation of People Act, 1951, the Petitioner took out two applications. Interlocutory Application No. 256 of 1952 was for adding those persons as parties and Interlocutory Application No. 257 of 1952 that an amendment of the Election Petition with a view to bring on record the newly added respondents. Orders were passed on the above Petitions on 29th November 1952 permitting the amendment and adding respondents 4 to 10 as parties. In passing the said orders we followed the decision given in Interlocutory Application Nos. 183 and 184 of 1952 in Election Petition No. 8 of 1952. Counsel for first respondent does not question the correctness of the said decision. His contention is that, although the Tribunal may have the power to amend the Election Petition and add parties, it was still open to him to urge, that the Petition, which was originally defective for non-joinder of all the necessary parties was liable to be dismissed on the ground of limitation in as much as the newly added parties were impleaded beyond the period provided by Rule 119 of the Election Rules. In other words, it is stated that the effect of the joinder of new parties should be read with Order 1, Rule 10(5) of the Civil Procedure Code, which in its turn, is subject to the provisions of Section 22 of the Limitation Act.

20. Clause (5) of Order 1, Rule 10 provides that "Subject to the provisions of Section 22 Limitation Act the proceedings against any person added as a defendant shall be deemed to have began only on the service of summons". The effect of Section 22 of the Limitation Act is that, on the addition of a new party, the suit will be deemed to have been instituted, as against him, when he was so made a party. The reason of the rule is obvious. Persons may be joined as parties at a stage long after the trial has begun, and it is but just and proper that the newly added party should have an opportunity to participate in the proceeding effectively. As regards limitation, it is well settled that the suit will be barred as against the newly added party if time has already elapsed in so far as relief is sought against him. (See *Chockalingam Chetty* v. *Seethai Achi* [1927 I.L.R. 6 Rangoon 29 (P.C.)]. The further question whether the suit as originally framed is also liable to be dismissed will not admit of a ready made answer. Where what was originally sought is a joint relief as against the defendants, and the suit cannot be maintained in the absence of the newly added parties, it can well be contended that the suit will be barred not only against the newly added parties, but also against all, as it cannot lie against the others alone as originally brought. On the other hand, where the relief is sought only as against the parties already on record, and the further addition of parties is merely to have the array of parties completed, and no relief is sought as against the new parties, it has been held that the original claim cannot be said to be barred. The distinction between the two lines of cases has been the subject of judicial discussion. (See Mitra's Limitation Act 7th Edition, Volume I page 249).

21. Counsel for respondent has cited certain decisions in support of his extreme contention that in all such cases the omission to implead a necessary party in time will result is the dismissal of the suit. In *Girish Chandra* v. *Ram Saran* L.I.R. 1929 Calcutta 591, the plaintiff had instituted the suit as assignee from one of the sons of the mortgagee and he had not taken steps within the time allowed to implead all the representatives of the deceased mortgagee. It was held that inasmuch as the suit was on the date of its institution an incompetent suit, the subsequent addition of the persons left out could not cure the defect. It is clear that in this case what was agitated against the defendants was a joint right, and also that relief was sought as against the newly added defendants. In *Maung Tun Thein* v. *Maung Sin* A.I.R. 1937 Rangoon 124 the suit was under Order 21, Rule 63, Civil Procedure Code, and the decree-holder failed to implead the judgment-debtors as parties to the suit and had them impleaded after the expiry of the period of limitation. It was held that the suit as originally brought was incompetent and that the suit was barred. In Dinesh Chandra *vs.* Rajendra Chandra (A.I.R. 1938 Calcutta 324), it was held that the suit for pre-emption under the Bengal Tenancy Act was not properly constituted, unless all the co-sharer Landlords were made parties. It was also recognised that there was a joint right in the defendants and that it could not be split up so as to render valid the suit originally laid against some of the necessary parties. An examination of the above cases reveals that they really fall under the first category of cases referred to above and that they do not militate against the other rule that relief can

be given to the plaintiff against the original defendants, where the newly added parties are impleaded for completing the array of parties rather than for giving any relief as against them.

22. The decision of the Bombay High Court in *Shivabai* v. *Shiddeswar* (1920) I.L.R. 45, Bombay (1009) illustrates the latter rule. In that case, some of the heirs of the mortgagor sued to redeem the mortgage a few days before the expiry of the period of limitation. To meet an objection raised for non-joinder of parties the plaintiffs subsequently applied to make the remaining heirs party defendants to the suit. It was held that the plaintiffs' right to redeem, which subsisted at the date of suit was not lost by their omission to implead the remaining heirs as parties. As Macleod C. J. observed:

> "they were merely necessary for the record in order to satisfy the provisions of Order 34, Rule I and I do not think it was ever intended that the plaintiffs in a case like this were liable to lose their right to redeem because they had omitted to make a person a party to the suit who ought to have been made a party".

Similarly in *Bishembardas* v. *Brijlal* (A.I.R. 1931 Bombay 590) Wadia J. observed thus:

> "Section 22 refers only to the parties subsequently added and the suit cannot fail as against the original defendants merely because they may have lost their remedy as against the newly added defendants, unless such a result flows from the nature of the suit."

It is well to remember that in the present case the petitioner has sought his remedy to have the election of the first respondent declared void. No relief is sought as against the newly added parties. Nor can it be suggested that any right has accrued to them by virtue of the lapse of time. The right, if any, has accrued only to the 1st respondent, and it is difficult to say that even indirectly and right has vested in the newly added parties. Under these circumstances it would be subordinating justice to a technicality of procedure if we should accede to the contention of the respondent. And we have in Order 1, Rule 9, Civil Procedure Code a clear provision that no suit shall be defeated by reason of non-joinder of parties.

23. It may be pointed out in this connection that the Madras High Court has held in *The South Indian Industrials Ltd.* v. *Narasimha Rao* (1926) I.L.R. 50 Madras 372 that where additional parties are impleaded the suit must be deemed to have been instituted against the added party on the date on which the application to add him as a party is made. This view has been enunciated notwithstanding the provision in Order 1, Rule 10 Civil Procedure Code that the material date is the date of service of summons on the newly added party. It is supported by the Explanation to Section 3 of the Limitation Act which says that "a suit is instituted ..... when a plaint is presented to the proper officer". It will be difficult to say that there was no valid election petition at all merely because some of the candidates other than the returned candidate were not impleaded therein. If as in the Madras case cited above the date of the presentation of the application for joinder of parties will be the starting point as against the newly added parties there is no reason why as against those originally impleaded time should not be counted from the date on which the petition was filed against them. To a question posed to him Counsel for Respondent stated that it will be possible to add parties to the Election Petition only if the application was made before the expiry of the period of limitation prescribed in Rule 119 of the Election Rules. We are of the opinion that there is nothing in principle or authority to support this very narrow construction. The decision of Ramesam J. in *Kandaswami Chettiar* v. *Foulkes*, A.I.R. 1926 Madras 396 is a direct authority for the view that an application for amendment of an Election petition so as to add new parties filed after the expiry of the period for filing the petition may, in the discretion of the Judge, be allowed. We have no doubt held in the order in I.A. Nos. 183 and 184 of 1952 that it is imperative that all the nominated candidates should be joined as parties to the Election Petition. But it is *non-sequitur* therefrom that the original Petition is liable to be dismissed merely because some of the newly added parties are impleaded after the expiry of the period of limitation prescribed for the filing of an Election Petition. Neither Order 1 Rule 10(5) of the Civil Procedure Code nor Section 22 of the Limitation Act prescribes a period of limitation. Such a period is prescribed by Rule 119 and reading it with the Explanation to Section 3 of the Limitation Act the Petition comes into existence on the date when it is delivered to the Election Commission, and any defect as to form such a non-joinder of parties or absence

of verification can always be cured by subsequent amendment with the permission of Court. We are consequently of the opinion that the plea of limitation raised by the respondent is unsustainable.

24. In view of our findings on Issues 1 and 2 the Petition has to be allowed. It is not without regret that we have to hold the election in this case to be wholly void and direct a fresh election, for the reason that the acceptance of the nomination paper of the first respondent was invalid. The case itself fortifies the view taken by us in the Gudiyattam Case (E.A. No. 109 of 1952) that it will be salutary to have the validity of nominations finally set at rest before the stage of holding the elections. It is unfortunate that the written contract (Exhibit A. 3.) between the Central Government and the first respondent or a copy thereof was not rendered available to the Returning Officer when he disposed of the objections. In the face of the contract with the Central Government and the covenants and stipulations therein it should have been easy enough to arrive at the conclusion that whatever might have preceded it, the operative and enforceable contract was with the Central Government, that it undoubtedly disclosed a subsisting interest on the part of the first respondent in a contract for service undertaken by the Central Government and that he was disqualified on that ground. We have no hesitation in holding that, that the bar under Section 7 Clause (d) of the Representation of People Act, 1951, attaches to the first respondent, that the result of the election has been materially affected by reason of the improper acceptance of his nomination paper, and we consequently declare the election to the Dharmapuri Parliamentary Constituency to be wholly void in terms of Section 100(1) (c) of the Act.

25. The first respondent will pay the costs of the petitioner. Advocate's Fee is fixed at Rs. 350/-. The first respondent should further pay the costs of the Government Pleader, representing the Attorney General, **fixed at Rs. 50/-**.

Pronounced in open Court, this, the 22nd day of January, 1953.

(Sd.) M. ANANTANARAYANAN, *Chairman.*

(Sd.) P. RAMAKRISHNAN, *Judicial Member.*

and (Sd.) B. V. VISWANATHA AIYAR, *Advocate Member.*

Petitioners Exhibits

A-1. 28-11-1951. Certified copy of the objection petition filed by Sri K. Subramanian, the petitioner, before the Returning Officer, Dharmapuri Parliamentary Constituency.

A-2. 28-11-1951. Certified copy of the order passed by the Returning Officer, Dharmapuri Parliamentary Constituency on the objection petition. Exhibit A-1.

A-3. 16-11-1949. Registered agreement entered into between Sri N. Satyanathan, the first respondent, and the Governor-General of India.

First Respondent's Exhibits:

B-1. 15-3-1948. Telegram sent by Registrars to the first respondent.

B-2. 26-4-1949. Stage carriage service Permit No. P.S.S. 4(5)/49, issued by the Regional Transport Authority, Salem to Sri N. Satyanathan, Proprietor, N. S. Motor Service, Salem.

B-3. 15-7-1949. Notice issued by the Regional Transport Officer, Tiruchirapalli, to Sri N. Satyanathan, Proprietor, N. S. Motor Service, Salem.

B-4. 23-7-1949. Extract from the Proceedings of the Regional Transport Authority, Salem, communicated to Sri N. Satyanathan, Proprietor, N. S. Motor Service, Salem.

B-5. 29-4-1952. Memorandum C. No. 3884/B2/52, of the Office of the Regional Transport Salem, communicated to Sri N. Satyanathan, Proprietor, N. S. Motor Service, Salem.

B-6. 28-11-1951. Certified copy of the objection petition filed by Sri K. Subramaniyan, Petitioner, before the Returning Officer, Dharmapuri Parliamentary Constituency.

B-7. 28-11-1951. Certified copy of the order passed by the Returning Officer, Dharmapuri Parliamentary Constituency, on Exhibit B-6.

B-8. 22-11-1950. Letter written by the Superintendent of Post Offices, Vellore Division, to Sri N. Satyanathan, Proprietor, N. S. Motor Service, Salem.

Petitioner's witness:

Nil.

First Respondent's Witness:

1. Sri N. Satyanathan (first respondent).

(Sd.) M. ANANTANARAYANAN, *Chairman*,
Election Tribunal.

Details of costs

Petitioner's. (to be paid by the 1st respondent).

	Rs.	as.	ps.
Vakalath.	1	0	0
Stamp on petitions, etc.	5	12	0
Process fees, etc.	30	9	0
Publication charges (in Dhinamani).	31	4	0
Pleader's fee.	350	0	0
Total.	418	9	0

(Bill of costs not filed by any of the respondents).

(Sd.) M. ANANTANARAYAN, *Chairman.*

[No. 19/35/52-Elec.III/4428.]

By Order,

K. S. RAJAGOPALAN, Asstt. Secy.

PRINTED IN INDIA BY THE MANAGER, GOVT. OF INDIA PRESS, NEW DELHI
AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, 1955